

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DEAN O. CART,)
)
Defendant.)

Cause No. 4:05-cr-15-SEB-VTW

REPORT AND RECOMMENDATION

On July 30, 2018, the Court held a Final Revocation Hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on June 26, 2018 (Docket No. 58). Defendant Dean O. Cart appeared in person with his appointed counsel James A. Earhart. The government appeared by Todd Shellenbarger, Assistant United States Attorney. U. S. Probation appeared by Officer Jessica Campbell.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. At the Initial Hearing on July 5, 2018, the Court advised Mr. Cart of his rights and provided him with a copy of the petition.
2. At that time, Mr. Cart waived his right to a preliminary hearing.
3. At the Final Revocation Hearing on July 30, 2018, the Government presented the testimony of U.S. Probation Officer Jessica Campbell.
4. Government's Exhibit 1 (an admission form signed by Defendant and Officer Campbell) was admitted without objection.

5. After hearing the testimony of the witness and the arguments of counsel, the Court finds that Defendant did violate the terms of his supervised release.
6. The allegations to which the Court finds the Defendant has violated, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>"You shall not have unsupervised meetings, activities, or visits, or intentional communications with any minor unless they have been disclosed to the probation officer and approved by the court. You shall not have supervised meetings, activities, visits, or intentional communications with any minor unless they have been approved by the probation officer. Before you may request approval for such meetings, activities, visits, or intentional communications (unsupervised or supervised), you must notify the person(s) having custody of any such minor(s) about the conviction in this case and the fact that you are under supervision."</p> <p>Mr. Cart admitted to the probation officer to having numerous contacts with minors while riding on the city bus from approximately December 2017, until May 2018. These contacts include engaging in conversation, followed by acts of frottage, including touching the bare breast of an approximate 15-16 year old girl.</p>
2	<p>"You shall not possess any child pornography or visual depictions of child erotica or nude minors. Any such material found in your possession shall be considered contraband and will be confiscated by the probation officer."</p> <p>Mr. Cart admitted to the probation officer to possessing an advertisement of a girl, approximately age 16, who was wearing a bra. The offender acknowledged the picture to be child erotica and admitted to using the picture for sexual gratification, including masturbation.</p>
3	<p>"You shall participate in a program of treatment for sexual disorders, including periodic polygraph examinations, as directed by the probation officer. The treatment provider should determine the type and timing of such polygraph examinations. The court authorizes the release of the presentence report and available psychological</p>

evaluations to the treatment provider, as approved by the probation officer."

On June 18, 2018, Mr. Cart was discharged from sexual disorder treatment due to multiple treatment violations.

7. The Court further finds that:

- (a) The highest grade of violation is a Grade C violation.
- (b) Defendant's criminal history category is I.
- (c) The guideline range of imprisonment applicable upon revocation of supervised release, therefore, is 3 to 9 months' imprisonment.
- (d) The statutory maximum term of imprisonment is 2 years.

8. The government and defense presented arguments regarding an appropriate sentence.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant VIOLATED the conditions in the Petition, that his supervised release should be REVOKED, and that he should be sentenced to the custody of the Attorney General or his designee for a period of 18 months with a lifetime of supervised release to follow.

In addition to the mandatory conditions of supervision, it is recommended the following conditions be imposed to assist the probation officer in supervising Mr. Cart and to ensure the safety of the community.

You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. (Supervised Release cases only)

You shall report to the probation officer in a manner and frequency directed by the court or probation officer.

You shall permit a probation officer to visit you at a reasonable time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.

You shall not knowingly leave the judicial district without the permission of the court or probation officer.

You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.

You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.

You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in residence occupants, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.

You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.

You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.

You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.

As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement.

You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.

Placement in a residential reentry center (RRC) will allow Mr. Cart to benefit from job placement services, establish a stable release plan, facilitate a stable reentry into society, and focus on his mental health treatment and counseling.

You shall reside in a residential reentry center for up to 12 months. You shall abide by the rules and regulations of the facility. You may petition for early release if you have a stable residence and are otherwise appropriate for release.

Considering the nature and circumstances of the current violations, a search condition would assist the probation office in attempts to monitor Mr. Cart.

You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary.

You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.

You shall not use or possess alcohol.

You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.

You shall participate in a mental health treatment program, as approved by the probation officer, and abide by the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). You shall take all mental health medications that are prescribed by your treating physician, and pay some or all of the costs of such treatment, if financially able.

Mr. Cart is a convicted sex offender, and the following conditions are recommended to assist the probation officer in monitoring Mr. Cart's behavior and to protect the community.

You shall not have any unsupervised meetings, non-incidental communications, activities, or visits with any minor, unless they have been disclosed to the probation officer and approved by the court. In determining whether to recommend approval of such activities involving members of your family, the probation officer shall determine if you have notified the persons having custody of any such minors about the conviction in this case and the fact that you are under supervision. If this notification has been made, and if the person having custody consents to these activities, then this condition is not intended to prevent recommended approval of the activity.

You shall not be employed in any position or participate as a volunteer in any activity that involves unsupervised meetings, non-incidental communications, activities, or visits with minors except as disclosed to the probation officer and approved by the court.

You shall not participate in unsupervised meetings, non-incidental communications, activities, or visits with persons you know to be a registered sex offender or to have been convicted of a felony sex offense involving an adult or minor, including any child pornography offense, except as disclosed to the probation officer and approved by the court. This condition is not intended to prevent you from participating in mental health treatment or religious services with felons in such programs so long as the activity has been disclosed as described above.

You shall not possess any obscene material, child pornography, child erotica, or nude images of minors. Any such material found in your possession shall be considered contraband and will be confiscated by the probation officer.

You shall participate in a program of treatment for sexual disorders, including periodic polygraph examinations, as directed by the probation officer. The treatment provider should determine the type and timing of such polygraph examinations. The court authorizes the release of the presentence report and available psychological evaluations to the treatment provider, as approved by the probation officer. You shall pay some or all of the costs of treatment, in accordance with your ability to pay.

You shall consent, at the direction of the probation officer, to having installed on your computer(s), telephone(s), electronic devices, and any hardware or software, systems to monitor your use of these items. Monitoring will occur on a random and/or regular basis. You will warn other occupants or users of the existence of the monitoring hardware or software. To promote the effectiveness of this monitoring, you shall disclose in advance all cellular phones, electronic devices, computers, and any hardware or software to the probation officer and may not access or use any undisclosed equipment. You shall pay some or all of the costs associated with the monitoring, in accordance with your ability to pay.

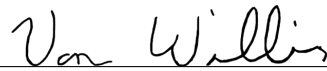
You shall pay the costs associated with the following imposed condition of supervised release/probation, to the extent you are financially able to pay: sexual disorder assessment and treatment; and computer monitoring systems. The probation officer shall determine your ability to pay and any schedule of payment.

Each of the above conditions was listed in the Revocation Parameters Worksheet, filed as an attachment to the Petition for Warrant for Offender Under Supervision (Dkt. 58), a copy of which Defendant and his counsel received at the Initial Hearing on July 5, 2018. Defendant

acknowledged at the hearing that he understood those conditions would be imposed upon his release from imprisonment.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: 8/1/2018

A handwritten signature in cursive script, reading "Van Willis", positioned above a horizontal line.

VAN WILLIS
United States Magistrate Judge
Southern District of Indiana

Distribution:

All ECF-registered counsel of record via email generated by the court's ECF system

United States Probation
United States Marshal